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2012 AUG 17 PM 2: 56

FIRST GENERAL COUNSEL'S REPORT

CELA

RAD REFERRAL 12L-15

DATE RECEIVED: April 3, 2012

DATE ACTIVATED: June 21, 2012

EARLIEST SOL: October 15, 2013

LATEST SOL: October 21, 2015

SOURCE:

Internally Generated

RESPONDENT:

Visclosky for Congress and Michael Malczewski
in his official capacity as treasurer

RELEVANT STATUTES:

2 U.S.C. § 434(b)
11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred Visclosky for Congress and Michael Malczewski in his official capacity as treasurer (the "Committee") to the Office of the General Counsel ("OGC") for failing to disclose receipts of \$152,806.54, and disbursements of \$61,981.93, an aggregate increase in activity of \$214,788.47. In total, the Committee filed eleven incomplete disclosure reports with the Commission from 2008 to 2010. The Committee has asserted that the reporting discrepancies were due to a former administrative campaign aide's failure to provide to Committee staff accurate information regarding interest earned on the Committee's deposits and investments, activity in the Committee's checking account, and expenses paid with campaign credit cards. The Committee requested pre-probable cause conciliation.

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Based on the available information, we recommend that the Commission open a matter under review ("MUR") in connection with RR 12L-15, and find reason to believe that the Committee violated 2 U.S.C. § 434(b) by failing to disclose receipts and disbursements accurately in reports to the Commission. Additionally, we recommend that the Commission enter into pre-probable cause conciliation with the Committee

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Committee is the principal campaign committee of Peter J. Visclosky, who is the U.S. Representative for Indiana's 1st Congressional District. The Committee filed timely its 2008 October Quarterly, 2008 12 Day Pre-General, 2008 30 Day Post-General, 2008 Year End, 2009 April Quarterly, 2009 July Quarterly, 2009 October Quarterly, 2009 Year End, 2010 July Quarterly, 2010 October Quarterly, and 2010 12 Day Pre-General Reports.

On March 11, 2010, however, a Committee staff member contacted the Committee's RAD Analyst regarding a discrepancy between the Committee's prior FEC reports and its bank records. At the RAD Analyst's direction, the Committee reconciled the Committee's financial activity and amended its reports. The Committee filed several amendments to each of these reports, some of which disclosed additional activity not included in the original reports, as reflected in the chart below.

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Report ¹	Date of Amendment	Increased Receipts	Increased Disbursements	Total
2008 October Quarterly	December 2, 2010	\$129,816.74	NA	\$129,816.74
2008 12 Day Pre-General	December 2, 2010	NA	\$14,819.01	\$14,819.01
2008 30 Day Post-General	December 2, 2010	NA	\$15,000.00	\$15,000.00
2008 Year End	December 2, 2010	\$13,644.64	\$11,873.16	\$25,517.80
2009 April Quarterly	January 25, 2011	NA	\$12,689.85	\$12,689.85
2009 July Quarterly	December 2, 2010	NA	\$909.07	\$909.07
2009 October Quarterly	December 2, 2010	NA	\$472.09	\$472.09
2009 Year End	January 25, 2011	\$9,345.16	NA	\$9,345.16
2010 July Quarterly	December 2, 2010	NA	\$307.61	\$307.61
2010 October Quarterly	December 2, 2010	NA	\$3,860.90	\$3,860.90
2010 12 Day Pre-General	December 2, 2010	NA	\$2,050.24	\$2,050.24
	TOTAL	\$152,806.54	\$61,981.93	\$214,788.47

1 RAD referred the Committee to OGC for failing to disclose receipts totaling \$152,806.54
2 and disbursements totaling \$61,981.93. *See* Memorandum from Patricia Carmona, Chief
3 Compliance Officer, Federal Election Commission, to Anthony Herman, General Counsel,
4 Federal Election Commission (Apr. 3, 2012) (hereinafter "Referral"). The Committee was
5 referred to OGC pursuant to RAD's 2011-2012 Review and Referral Procedures, in which the
6 Commission established a new threshold for referring increases or decreases in activity that
7 aggregate over on amendments filed to reports covering the current election cycle, the
8 previous election cycle, or both election cycles, which were received during the current election
9 cycle. *See 2011-2012 RAD Review and Referral Procedures for Authorized Committees at 75.*²
10 Upon receipt of the Referral, OGC notified the Committee about this matter on April 9, 2012.

¹ Under 11 C.F.R. § 111.43(d)(1), the Committee's 2008 October Quarterly Report, 2008 12 Day Pre-General Report, 2010 October Quarterly Report, and 2010 12 Day Pre-General Report are election sensitive.

² The 2011-2012 Review and Referral Procedures also separately maintain the previously established policy of referral to OGC if an amendment is filed at least days after the original report and discloses an increase or decrease in receipts or disbursements or debts of more than and, for election sensitive reports, is in excess of and for non-election sensitive reports, is in excess of. *See id.* at 74-75.

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1 *See Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed.
2 Reg. 38617 (Aug. 4, 2009).

3 In response to the Referral, the Committee acknowledged the reporting errors and
4 requested pre-probable cause conciliation. *See* Letter from William L. Drake, Counsel for
5 Visclosky for Congress, to Jeff S. Jordan, Complaints Examination & Legal Administration,
6 Federal Election Commission (June 1, 2012) at 1 (hereinafter "Response").³ The Committee
7 explained that the reporting discrepancies were due to a former administrative campaign aide's
8 failure to provide to Committee staff accurate information regarding interest earned on the
9 Committee's deposits and investments, activity in the Committee's checking account, and
10 expenses paid with campaign credit cards. *Id.* at 2, 3. The Committee's relationship with the
11 former campaign aide ended in June 2009, but the Committee discovered the reporting
12 inaccuracies only in March 2010, when one of the Committee's banks notified the Committee
13 that a Certificate of Deposit ("CD") held by the Committee had matured. *Id.* at 2. The
14 Committee had not previously been aware that the Committee held that CD. *Id.*

15 Upon this discovery, the Committee immediately notified RAD that it had failed to report
16 the interest earned on that CD. *Id.* On the advice of the RAD Analyst, the Committee reconciled
17 its financial activity and discovered that, among other things, activity in the Committee's
18 checking account and expenses paid with campaign credit cards had been reported inaccurately.

³ The Committee styled its Response as a "*sua sponte* submission," given that the Committee had initially self-reported the likelihood of discrepancies in March 2010. Although the Response to the Commission's Referral Notice itself is not a true *sua sponte* submission, *see* Letter from Jeff S. Jordan to Michael Malcazewski (Apr. 9, 2012), the Commission gives committees credit for self-reporting increased activity in disclosure reports by seeking a substantially reduced civil penalty. *See infra* p. 8.

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1 *Id.* at 2, 3. To remedy the discrepancies, the Committee completed a comprehensive, voluntary
2 internal investigation of all campaign disbursements from July 2008 through June 1, 2012. *Id.* at
3 2. In May 2010, the Committee hired an experienced FEC campaign finance consultant to
4 perform a full, unlimited audit of the Committee's books and FEC reports. *Id.* In accordance
5 with the consultant's advice, the Committee filed amendments to FEC reports for July 2008
6 through December 2010. *Id.* at 3. The Committee also instituted new controls on its financial
7 accounts and amended its accounting and reporting procedures to prevent such errors from
8 recurring. *Id.*

9 **B. Legal Analysis**

10 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee
11 treasurers to file reports of receipts and disbursements in accordance with the provisions of
12 2 U.S.C. § 434. *See* 2 U.S.C. § 434(a)(1); 11 C.F.R. § 104.1(a). These reports must include,
13 *inter alia*, the total amount of receipts and disbursements. *See* 2 U.S.C. § 434(b); 11 C.F.R.
14 § 104.3. The Act also requires committees to disclose itemized breakdowns of receipts and
15 disbursements, and to disclose the name and address of each person who has made any
16 contribution or received any disbursement in an aggregate amount or value in excess of \$200
17 within the calendar year, together with the date and amount of any such contribution or
18 disbursement. *See* 2 U.S.C. § 434(b)(2)-(6); 11 C.F.R. § 104.3(a)(4), (b)(3)-(4).

19 Here, the Committee did not comply with the Act's reporting requirements when it failed
20 to disclose \$152,806.54 in receipts and \$61,981.93 in disbursements on its eleven original
21 reports listed above. We therefore recommend the Commission find reason to believe that the
22 Committee violated 2 U.S.C. § 434(b).

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2 **IV. RECOMMENDATIONS**

- 3 1. Open a MUR in RR 12L-15.
4
5 2. Find reason to believe that Visclosky for Congress and Michael Malczewski in his
6 official capacity as treasurer violated 2 U.S.C. § 434(b).
7
8 3. Approve the attached Factual and Legal Analysis.
9
10 4. Enter into conciliation with Visclosky for Congress and Michael Malczewski in
11 his official capacity as treasurer prior to a finding of probable cause to believe.
12
13 5.

6. Approve the appropriate letters.

Anthony Herman
General Counsel

Daniel A. Petalas
Associate General Counsel

8-17-12
Date

BY: Kathleen M. Guith
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